

\*E-Filed: April 3, 2014\*

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

MARIA SANDOVAL, ET AL.,

No. C13-01909

Plaintiffs,

v.

**ORDER GRANTING DEFENDANT  
MORALES' MOTION TO DISMISS  
PORTIONS OF PLAINTIFFS'  
SECOND AMENDED COMPLAINT**

CITY OF WATSONVILLE, ET AL.,

Defendants.

[Re: Docket No. 47]

Plaintiffs Maria and Omar Sandoval sue the City of Watsonville, Edward Delfin, and Roy Morales pursuant to § 1983 for alleged deprivations of Plaintiffs' Fourth Amendment rights and related state law claims. Morales moves to dismiss two of the state law claims because Plaintiffs failed to administratively exhaust their remedies as required by the California Tort Claims Act (CTCA).<sup>1</sup> Plaintiffs filed a statement of non-opposition. The matter is deemed suitable for determination without oral argument, and the hearing set for April 8, 2014, is vacated. *See* Civil L.R. 7-1(b). Based on the moving papers and non-opposition, the motion is GRANTED.

Pursuant to the CTCA, no suit for damages may be brought against a public entity or employee thereof acting within the scope of their employment until a written claim has been presented to the local entity and acted upon. *See* Cal. Govt. Code §§ 945.4, 950.2. A claim relating

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<sup>1</sup> Morales moves to dismiss the sixth claim for violation of the Bane Act and twelfth claim for negligence. He asserts that Plaintiffs' counsel previously agreed to voluntarily dismiss Plaintiffs' other state law claims (seven through eleven), which is why they are not addressed in the motion. However, no such voluntary dismissal has yet been filed with the Court.

1 to a cause of action for personal injury shall be presented not later than six months after the accrual  
2 of the cause of action. Cal. Govt. Code § 911.2(a).

3 At the time of the alleged incident, March 2012, Morales was employed by the Santa Cruz  
4 County Sheriff's Office. However, Plaintiffs' Second Amended Complaint misidentifies Morales as  
5 a Police Officer for the City of Watsonville, and it alleges that Plaintiffs presented a claim only to  
6 the City of Watsonville. Morales asserts that Plaintiffs in fact did not present a claim to the County  
7 of Santa Cruz pursuant to the CTCA and that the time for them to do so has run. Accordingly,  
8 Plaintiffs' state law claims are barred and should be dismissed without leave to amend. Particularly  
9 in view of Plaintiffs' non-opposition, the Court agrees.

10 Accordingly, Morales' motion is GRANTED. Plaintiffs' sixth and twelfth claims for relief  
11 are dismissed as against Morales without leave to amend.<sup>2</sup>

12 **IT IS SO ORDERED.**

13 Dated: April 3, 2014

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16 HOWARD R. LLOYD  
17 UNITED STATES MAGISTRATE JUDGE  
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26 <sup>2</sup> In their statement of non-opposition, Plaintiffs request leave to file a third amended complaint to  
27 cure defects not mentioned in Morales' motion by properly identifying Morales while making no  
28 substantive changes. While the Court is generally amendable to the proposed amendment,  
Plaintiffs' statement of non-opposition was not the appropriate vehicle for such a request because it  
specifically was not responsive to issues raised by the motion. Instead, Plaintiff should file a  
separate motion for leave to amend or, preferably, file an amended complaint pursuant to stipulation  
of all parties.

**C13-01909 HRL Notice will be electronically mailed to:**

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